

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**XAVIER HARPER,
Plaintiff**

vs.

**LOGGINS LOGISTICS, INC.,
HIGHWAY EQUIPMENT &
LEASING, LLC AND JOHN G.
MARSHALL, III
Defendants.**

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**CIVIL ACTION NO. 3:17-cv-1691
JURY**

PLAINTIFF'S ORIGINAL COMPLAINT

NOW COMES, XAVIER HARPER, Plaintiff, and files this his Original Complaint against LOGGINS LOGISTICS, INC., HIGHWAY EQUIPMENT & LEASING, LLC and JOHN G. MARSHALL, III, Defendants, and for just cause would respectfully show the Court the following:

NATURE OF THE CASE

1. This action arises as a result of an automobile accident which injured XAVIER HARPER on or about July 13, 2015.

PARTIES

2. XAVIER HARPER is an individual who resides in the State of Texas.
3. LOGGINS LOGISTICS, INC. is a corporation organized in the State of Arkansas and may be served by sending a copy of the summons and complaint by certified mail, return receipt requested to its registered agent, Jeff Loggins, 5706 Commerce Square, Jonesboro, Arkansas 72401.

4. HIGHWAY EQUIPMENT & LEASING, LLC is a limited liability company organized in the State of Arkansas and may be served by sending a copy of the summons and complaint by certified mail, return receipt requested to its registered agent, Jeff Loggins, 5706 Commerce Square, Jonesboro, Arkansas 72401.
5. JOHN G. MARSHALL, III is an individual who resides at 2531 Highway 355 South, Hempstead, Arkansas 71838 and may be served with the summons and complaint at this address.

JURISDICTION AND VENUE

6. Jurisdiction in this case is proper in this Court pursuant to 28 U.S.C. § 1332(a) as this case is between citizens of different states and the amount in controversy exceeds \$75,000.00.
7. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(a), because the wrongful act or omission of the Defendants occurred within this Judicial District.

FACTUAL BACKGROUND

8. On or about July 13, 2015, XAVIER HARPER was operating a 2006 Buick Lucerne in a careful and prudent manner, traveling westbound in the inside lane on Interstate 30 in Fate, Rockwall County, Texas. Defendant JOHN G. MARSHALL, III was driving a 2006 Freightliner tractor and towing a trailer owned by Defendant LOGGINS LOGISTICS, INC. and/or HIGHWAY EQUIPMENT & LEASING, LLC in the course and scope of his employment with Defendant LOGGINS LOGISTICS, INC. and/or HIGHWAY EQUIPMENT & LEASING, LLC. Defendant JOHN G. MARSHALL, III was traveling westbound in the outside lane on Interstate Highway 30. Suddenly and without warning, Defendant JOHN G. MARSHALL, III began to change lanes when

unsafe from the outside lane to the inside lane and struck Plaintiff's vehicle, subjecting the Plaintiff to tremendous force.

9. At the time of the occurrence, Defendant JOHN G. MARSHALL, III was in the course and scope of his employment with Defendant LOGGINS LOGISTICS, INC. and/or HIGHWAY EQUIPMENT & LEASING, LLC.

NEGLIGENCE AND NEGLIGENCE PER SE

10. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.
11. Defendant JOHN G. MARSHALL, III was negligent in various acts and omissions, which negligence was the proximate cause of the accident described herein which includes, but is not limited to, the following:
- A. Violating Section 545.060 of Vernon's Texas Statutes and Codes, Annotated, Transportation Code, which reads in pertinent part:
 - (i) An operator on a roadway divided into two or more clearly marked lanes for traffic:
 - (1) Shall drive as nearly as practical entirely within a single lane; and
 - (2) May not move from the lane unless that movement can be made safely.
 - B. Failing to keep a proper lookout;
 - C. Failing to timely apply his brakes.
 - D. Failing to control the vehicle.
 - E. Failing to act and/or respond in a reasonable manner.
 - F. Failing to control the speed of the vehicle.
12. The foregoing acts of negligence and negligence per se by JOHN G. MARSHALL, III, acting singularly or in combination, were a proximate cause of the incident and the resulting damages to the Plaintiff.

13. At the time and on the occasion in question, and immediately prior thereto, Defendant LOGGINS LOGISTICS, INC. committed acts of omission and commission, which collectively and severally constituted negligence and which were a proximate cause of the injuries to and the damages of Plaintiff.
14. The independent acts of negligence of Defendant LOGGINS LOGISTICS, INC., include but are not limited to, the following:
 - A. Entrusting the subject truck to an unlicensed, incompetent and/or reckless driver when it knew and/or should have known the driver of the subject truck was unlicensed, incompetent, and/or reckless;
 - B. Hiring and retaining an unlicensed, incompetent and/or reckless driver when it knew and/or should have known that the subject driver was unlicensed, incompetent and/or reckless; and
 - C. Failing to properly train its driver.
15. At the time and on the occasion in question, and immediately prior thereto, Defendant HIGHWAY EQUIPMENT & LEASING, LLC committed acts of omission and commission, which collectively and severally constituted negligence and which were a proximate cause of the injuries to and the damages of Plaintiff.
16. The independent acts of negligence of Defendant HIGHWAY EQUIPMENT & LEASING, LLC, include but are not limited to, the following:
 - A. Entrusting the subject truck to an unlicensed, incompetent and/or reckless driver when it knew and/or should have known the driver of the subject truck was unlicensed, incompetent, and/or reckless;
 - B. Hiring and retaining an unlicensed, incompetent and/or reckless driver when it knew and/or should have known that the subject driver was unlicensed, incompetent and/or reckless; and
 - C. Failing to properly train its driver.

17. Each of the foregoing acts of negligence was a proximate cause of the collision in question and the injuries and damages of Plaintiff.

RESPONDEAT SUPERIOR

18. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.
19. Defendant LOGGINS LOGISTICS, INC. is liable for the damages proximately caused to Plaintiff by the conduct of Defendant JOHN G. MARSHALL, III in that Defendant LOGGINS LOGISTICS, INC. was the employer of Defendant JOHN G. MARSHALL, III on the date that Defendant JOHN G. MARSHALL, III negligently injured Plaintiff, as alleged above, and Defendant JOHN G. MARSHALL, III was acting within the course and scope of that employment when that injury occurred or Defendant LOGGINS LOGISTICS, INC. had the right to control the activities of JOHN G. MARSHALL, III.
20. Defendant HIGHWAY EQUIPMENT & LEASING, LLC is liable for the damages proximately caused to Plaintiff by the conduct of Defendant JOHN G. MARSHALL, III in that Defendant HIGHWAY EQUIPMENT & LEASING, LLC was the employer of Defendant JOHN G. MARSHALL, III on the date that Defendant JOHN G. MARSHALL, III negligently injured Plaintiff, as alleged above, and Defendant JOHN G. MARSHALL, III was acting within the course and scope of that employment when that injury occurred or Defendant HIGHWAY EQUIPMENT & LEASING, LLC had the right to control the activities of JOHN G. MARSHALL, III.

NEGLIGENT ENTRUSTMENT

21. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.

22. At the time and on the occasion in question, and immediately prior thereto, Defendant LOGGINS LOGISTICS, INC. was guilty of negligent entrustment and knew or should have known that Defendant JOHN G. MARSHALL, III was a negligent and reckless driver.
23. At the time and on the occasion in question, and immediately prior thereto, Defendant HIGHWAY EQUIPMENT & LEASING, LLC was guilty of negligent entrustment and knew or should have known that Defendant JOHN G. MARSHALL, III was a negligent and reckless driver.

NEGLIGENT UNDERTAKING

24. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.
25. Defendants or their agents undertook, either gratuitously or for their own benefit, obligations to train, supervise, direct, instruct, and/or control the performance of workers and/or the operation of equipment or vehicles. Defendants knew or should have known that such training, supervision, direction, instruction, control, and/or operation was necessary for Plaintiff's protection. Defendants failed to exercise reasonable care in performing those obligations. Plaintiff relied on Defendants' performance, and Defendants' performance increased Plaintiff's risk of harm.

DAMAGES TO XAVIER HARPER

26. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.
27. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, XAVIER HARPER was caused to suffer and to

endure anxiety, pain, and illness. Consequently, XAVIER HARPER is entitled to the following items of damages:

- A. Reasonable and necessary medical care and expenses in the past;
- B. Reasonable and necessary medical care and expenses which, in reasonable probability, will be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering which, in reasonable probability, will be incurred in the future;
- E. Mental anguish in the past;
- F. Mental anguish which, in reasonable probability, will be incurred in the future;
- G. Physical impairment in the past;
- H. Physical impairment which, in reasonable probability, will be suffered in the future;
- I. Physical disfigurement in the past;
- J. Physical disfigurement which, in reasonable probability, will be suffered in the future;
- K. Loss of earning capacity in the past; and
- L. Loss of earning capacity which, in reasonable probability, will be incurred in the future.

GROSS NEGLIGENCE

- 28. Plaintiff adopts the allegations of the above-numbered paragraphs and incorporates the same where relevant.
- 29. Defendants committed willful acts or omissions of gross negligence that were a proximate cause of the injuries to Plaintiff and the damages of Plaintiff, and for which Plaintiff is entitled to recover punitive damages.

JURY DEMAND

30. Plaintiff requests a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein and that, upon final trial, Plaintiff recover the following:

- A. Actual damages;
- B. Post-judgment interest as allowed by Federal law;
- C. Court costs, fees and other expenses; and
- D. Other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

GOUDARZI & YOUNG, L.L.P.
P.O. Drawer 910
Gilmer, Texas 75644
Telephone: (903) 843-2544
Facsimile: (903) 843-2026

By: /s/ Brent Goudarzi

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Harper, Xavier

(b) County of Residence of First Listed Plaintiff Titus
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
GOUDARZI & YOUNG, LLP
P.O. DRAWER 910, GILMER, TEXAS 75644

DEFENDANTS

Loggins Logistics, Inc., Highway Equipment & Leasing, LLC and John G. Marshall, III

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(a)

Brief description of cause:
MOTOR VEHICLE ACCIDENT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/27/2017

/s/ Brent Goudarzi

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE